

AN ACT

ENTITLED, An Act to revise the elements of the crime of eavesdropping.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 23A-35A-20 be amended to read as follows:

23A-35A-20. Except as provided in § 23A-35A-21, a person is guilty of a Class 5 felony who being:

- (1) Not a sender or receiver of a telephone or telegraph communication, intentionally and by means of an eavesdropping device overhears or records a telephone or telegraph communication, or aids, authorizes, employs, procures, or permits another to so do, without the consent of either a sender or receiver thereof;
- (2) Not present during a conversation or discussion, intentionally and by means of an eavesdropping device overhears or records such conversation or discussion, or aids, authorizes, employs, procures, or permits another to so do, without the consent of a party to such conversation or discussion; or
- (3) Not a member of a jury, intentionally records or listens to by means of an eavesdropping device the deliberations of the jury or aids, authorizes, employs, procures, or permits another to so do.

Section 2. That § 23A-35A-1 be amended to read as follows:

23A-35A-1. Terms used in this chapter mean:

- (1) "Aggrieved person," a person who was a party to any intercepted wire or oral communication or a person against whom the interception was directed;
- (2) "Attorney general," the attorney general of the State of South Dakota;
- (3) "Chapter 119 of the United States Code," Chapter 119 of Part I of Title 18, United States Code, being Public Law 90-351, the Omnibus Crime Control and Safe Streets Act of

1968;

- (4) "Communications common carrier," the meaning which is given the term "common carrier" by section 153(h) of Title 47 of the United States Code;
- (5) "Contents," when used with respect to any wire or oral communication, any information concerning the identity of the parties to such communication or the existence, substance, purport, or meaning of that communication;
- (6) "Eavesdropping device," any electronic, mechanical, or other apparatus which is intentionally used to intercept a wire or oral communication other than:
 - (a) Any telephone or telegraph instrument, equipment, or facility, or any component thereof, (i) furnished to the subscriber or user by a communications common carrier in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business; or (ii) being used by a communications common carrier in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of duty;
 - (b) A hearing aid or similar device being used to correct subnormal hearing to not better than normal;
- (7) "Intercept," the aural acquisition of the contents of any wire or oral communication through the use of any eavesdropping device;
- (8) "Investigative or law enforcement officer," any officer of the State of South Dakota or any political subdivision thereof who is empowered by the laws of this state to conduct investigations of or to make arrests for offenses designated and enumerated in this chapter, any law enforcement officer of the United States and any attorney authorized by the laws of this state to prosecute or participate in the prosecution of offenses designated and enumerated in this chapter;

- (9) "Judge," or "judge of competent jurisdiction," the judge of any circuit court of the State of South Dakota;
- (10) "Oral communication," any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation;
- (11) "Pen register," a device which records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which the device is attached, but the term does not include any device used by a provider or customer of a wire communication service for billing, or recording as an incident to billing, for communications services provided by the provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business;
- (12) "Person," any employee, or agent of the United States or any state or political subdivision thereof, and any individual, partnership, limited liability company, association, joint stock company, trust, or corporation;
- (13) "State's attorney," the state's attorney of any county of the State of South Dakota;
- (14) "Trap and trace device," a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire communication was transmitted; and
- (15) "Wire communication," any communication made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception furnished or operated by any person engaged as a common carrier in providing or operating such facilities for the transmission of interstate or foreign communications.

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I certify that the attached Act
originated in the

HOUSE as Bill No. 1104

Chief Clerk
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Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1104

File No. _____

Chapter No. _____

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Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor
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The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor
=====

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State